# OFFICE OF THE STATE PUBLIC DEFENDER STATE OF WISCONSIN

2001-03 BIENNIAL REPORT

NICHOLAS L. CHIARKAS STATE PUBLIC DEFENDER

#### **Wisconsin State Public Defender**



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Nicholas L. Chiarkas State Public Defender

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The Honorable James E. Doyle Governor, State Of Wisconsin 115 East, State Capitol Madison, Wisconsin 53702

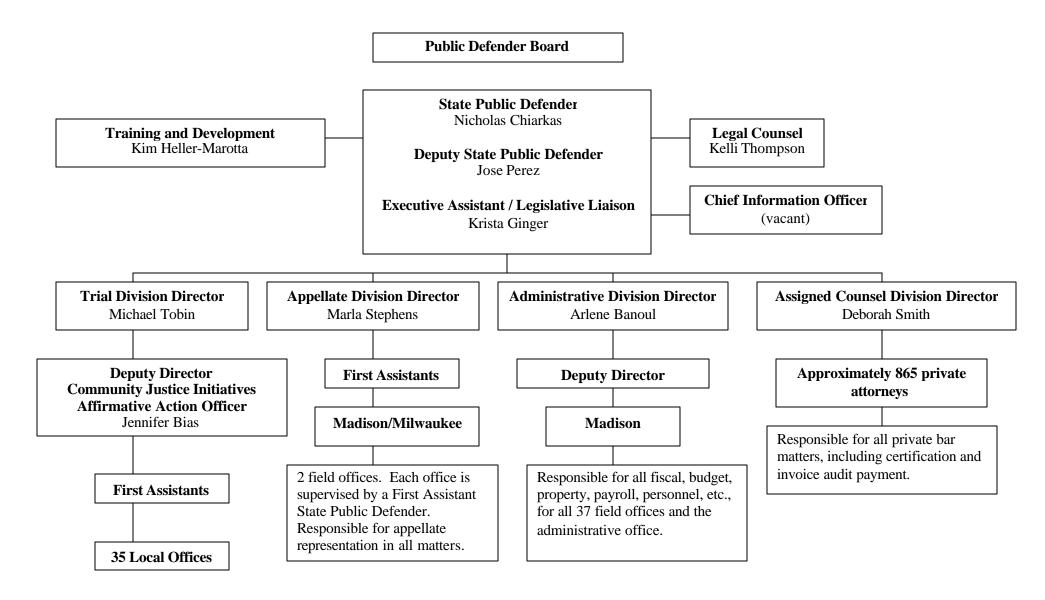
Members of the Wisconsin State Legislature State Capitol Madison, Wisconsin 53702

Dear Governor Doyle and Members of the Legislature:

In accordance with the Wisconsin Statutes, sec. 15.04(1)(d), we are submitting the 2001-03 Biennial Report of the Office of the State Public Defender. This report includes an overview of the State Public Defender Board and the Office of the State Public Defender, a history of the program through the 2001-03 biennium, agency performance and operations during the 2001-03 biennium, a summary of major decision items approved in the 2001-03 biennial budget, a summary of program goals and objectives included in the 2003-05 biennial budget, and a summary of the Office of the State Public Defender part-time positions and alternative work patterns.

Sincerely,

NICHOLAS L. CHIARKAS State Public Defender



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### OVERVIEW OF THE OFFICE OF THE STATE PUBLIC DEFENDER

The Office of the State Public Defender is an independent executive agency, which operates under the direction of the Public Defender Board. The Board has nine members who are nominated by the Governor, with the advice and consent of the Senate, for staggered three-year terms. A minimum of five members of the Board must be members of the State Bar of Wisconsin.

Under Wisconsin Statutes, s. 977.02, Stats., the Board's functions include:

- 1. Appointment of the state public defender (s. 977.02(1), Stats.);
- 2. Submission of the budget of the state public defender to the governor (s. 977.02(2), Stats.);
- 3. Promulgation of administrative rules;
- 4. Review of decisions of the state public defender regarding private bar bill payments (s. 977.02(7), Stats.);
- 5. Establishing agreements with state and local bar associations, law firms, and private counsel designed to encourage pro bono legal representation for indigent persons (s. 977.02(7m), Stats.); and
- 6. Performance of all other duties necessary and incidental to the performance of any duty enumerated in chapter 977 (s. 977.02(8), Stats).

The members of the State Public Defender Board are: Daniel M. Berkos, Chair, Mauston; Harry Hertel, Eau Claire; Stella A. Young, Racine; Jerry Baumbach, Sun Prairie; John Farrow, Pewaukee; Roberta Harris, Milwaukee; John Hogan, Rhinelander; Marc T. McCrory, Janesville; and James T. Rogers, Merrill.

The following new board members have been nominated and are awaiting confirmation by the Legislature: Daniel Berkos, Mauston, Chair; James M. Brennan, Milwaukee; John Hogan, Rhinelander; Joe Morales, Racine; Pamela Pepper, Milwaukee; Ellen Thorn, Sparta; Nancy Wettersten, Madison; Mai Neng Xiong, Madison.

Nicholas L. Chiarkas, the State Public Defender, serves at the pleasure of the State Public Defender Board. Under section 977.05(4), Stats., the State Public Defender's duties include:

- 1. Supervising all operations of the agency;
- 2. Making final decisions on all agency policy;
- 3. Making all hiring decisions in response to recommendations from hiring panels and division administrators;
- 4. Making final decisions on all disciplinary actions;
- 5. Making final decisions on all promotions in response to the advice of division administrators;
- 6. Establishing a case management system for use by the trial and appellate staff attorneys;
- 7. Making all final decisions regarding the disposition of any case handled by the office;
- 8. In a broad sense, supervising the quality of work of the staff and approximately 1,000 private practitioners who accept public defender cases, including overseeing the structure of the appointment process;
- 9. Making all decisions on whether to decertify private attorneys who have allegedly failed to meet the obligations to public defender clients;
- 10. Accepting referrals from judges, courts or state agencies for the determination of eligibility of persons who claim or appear to be eligible;
- 11. Accepting referrals from judges and courts for the provision of legal services without a determination of eligibility of children who are entitled to be represented by counsel under ss. 48.23 or 938.23, Stats.;
- 12. Accepting requests for legal services from children who are entitled to be represented by counsel under ss. 48.23 or 938.23, Stats., and from eligible persons who are entitled to be represented by counsel under the statutes or the constitutions:
- 13. Providing legal services in felony, misdemeanor, civil commitment, juvenile, and paternity cases, as specified by state statute;
- 14. Developing and define standards of performance for the staff and private attorneys;
- 15. Working in conjunction with the Board of Attorneys Professional Responsibility and the Supreme Court on matters of attorney discipline;

- 16. Developing long-term statewide planning for the agency, anticipating where the overall program should be going in future years and designing systems to position the agency accordingly;
- 17. Staffing the Public Defender Board. Tasks include designing the format of materials, presenting agenda items to the Board, maintaining an ongoing relationship with members, and keeping individual members abreast of various aspects of the agency between meetings;
- 18. Maintaining relationships with the judiciary by interpreting for them State Public Defender agency policy, resolving controversy with staff and maintaining their support for the program;
- 19. Representing the defense perspective and State Public Defender agency interests in a range of committees or commissions, either personally or by delegation. This includes representation of the agency in the National Legal Aid and Defender Association, and the American Bar Association:
- 20. Supervising the development of the agency's biennial budget and decide which items are to be recommended to the Board, Governor and Legislature.

The Office of the State Public Defender as a Deputy State Public Defender and consists of four divisions: 1) Administrative, 2) Appellate, 3) Assigned Counsel, and 4) Trial.

The Administrative Division is responsible for providing staff support services in areas such as budget preparation, fiscal analysis, purchasing, client collection and payroll.

The Appellate Division assigns cases and provides post-judgment legal representation, certifies private attorneys for appellate level appointment, serves as a resource for SPD staff and the private bar on matters of substantive and procedural criminal law and responds to all inquiries in post-conviction matters.

The Assigned Counsel Division (ACD) provides support services to certified private attorneys appointed to SPD cases. The ACD certifies private attorneys for trial level representation, provides training for private attorneys, processes investigator and expert requests for private bar attorneys in SPD cases, and administers all SPD private bar attorney payments. The ACD shares responsibility with the Trial and Appellate Divisions for monitoring private attorney performance.

The Trial Division assigns cases and provides legal representation at the trial level in criminal, civil commitment, sexual predator commitment, protective placement, probation or parole revocation, contempt of court, termination of parental rights, delinquency, paternity, and some children in need of protection or services cases. The Trial Division also represents all individuals at initial bail hearings, regardless of financial eligibility, at the request of the courts, to ensure efficient court operations.

### HISTORY OF THE PUBLIC DEFENDER PROGRAM THROUGH THE 2001-03 BIENNIUM

The Office of the State Public Defender's mission is to enhance the quality of justice throughout Wisconsin by providing high quality, compassionate, and cost-effective legal representation; protecting the rights of the accused; and advocating as a criminal justice partner for effective defender services and a fair and rational criminal justice system.

The Office of the State Public Defender was created by state statute in 1965. Until 1972, the office consisted of one attorney, an employee of the Wisconsin Supreme Court, who represented indigents seeking post-conviction relief. The staff of this appellate office expanded gradually, and their duties were expanded to include representation of eligible individuals in probation and parole revocations. Prior to 1975, the method of providing defense counsel for an indigent defendant at the trial level was the county based assigned counsel method.

In 1977, the Public Defender Board was established and transferred from the Supreme Court to the executive branch as an independent agency. The Office of the State Public Defender was divided into a Trial Division and an Appellate Division. Funding was provided to implement a public defender program, and the responsibility for indigent defense was transferred from the counties to the state. The first trial offices were opened in 1978.

Chapter 356, laws of 1979, which became effective July of 1980, established a four-tiered system for the representation of indigents. In 25 counties, 100 percent of the cases would be handled by the private bar; in 6 counties, 50 percent of the cases would be handled by the private bar and 50 percent by staff; in 31 counties, 25 percent of the cases would be handled by the private bar and 75 percent by staff; and in 10 urban counties, 15 percent of the cases would be handled by the private bar and 85 percent by public defender staff. By 1984-85, the public defender Trial Division staff attorneys were budgeted to provide representation for approximately 75 percent of the trial court level cases in 47 counties, and approximately 84 percent of the statewide appellate court level cases.

In 1985, the Legislature repealed the sunset provision that would have returned the appointment for indigent representation to a strictly court appointed private bar basis and instituted a statewide public defender program. Staff was added to allow cases to be handled in all 72 counties. This decision reaffirmed the goals and philosophy of the public defender program and recognized that a statewide program is the most efficient, the most uniform, and the most cost-effective means for providing representation to eligible defendants.

Also in 1985, the Legislature specified that the budgeted caseload of a staff attorney handling cases on the trial court level is 15 homicide cases, 184.5 felony cases, 492 misdemeanor cases, or 246 "other" cases.

In June of 1989, in order to establish the most cost-effective way of reducing staff caseloads to the ABA maximum standard of 150 felony or 300 misdemeanor or 200 "other" cases, the State Public Defender contracted with the Spangenberg Group to develop an appropriate caseload for the agency. In November 1990, the State Public Defender adopted the findings of the Spangenberg Group, and proposed a three-year plan to reduce staff caseloads to the level recommended by Spangenberg. A partial caseload reduction was incorporated into the agency's 1991-93 biennial budget in July, 1991. Beginning January 1, 1993, staff caseloads were set at 166.8 felonies, 410.9 misdemeanors, 228.4 juveniles, or 256 other cases. Additionally, the 1991-93 budget enacted a special caseload standard for first degree homicides, which is a standard of 15 homicides per year.

The 1995-97 Biennial Budget, Act 27, returned caseload standards for staff attorneys to the levels existing prior to January 1, 1993. The budget also required that the agency promulgate administrative rules regarding new programs for collections, verification and assignment of private bar cases based on efficiencies. Act 27 also required that the State Public Defender Board enter into annual fixed fee contracts with private attorneys and law firms. The maximum number of cases assigned in this manner cannot exceed 33 percent of the total number of cases at the trial level.

Act 27 eliminated SPD representation in cases involving conditions of confinement, early representation, certain sentence modifications and certain appeals. In addition, representation was limited for paternity and non-payment of child support cases, probation and parole modifications, and revocations. Representation for parents whose children are involved in a CHIPS proceeding was also eliminated.

The 1997-99 Biennial Budget, Act 27, continued all the initiatives from the prior biennium including the higher caseloads, collections, verification and fixed-fee contracting. The budget also established a new statutory caseload for sexual predator cases equal to 15 cases per year.

As part of the 1995-97 Biennial Budget, all agency computer personnel were transferred to the newly created Bureau of Justice Information Systems (BJIS) within the Department of Administration (DOA). The 1997-99 Budget created a chief information officer position for the State Public Defender responsible for guiding and implementing information technology in the agency. BJIS was funded with \$2.8 million to purchase and install 368 computers (approximately two-thirds of the agency's staff) for the State Public Defender during the biennium. In December 1997, DOA approved the State Public Defender's

proposal to assume responsibility for converting the entire agency to state standard personal computers within the funding level provided in Act 17. DOA also transferred back to the agency all responsibility for information technology support and planning. In October of 1998, all of the agency's offices were converted. The conversion, which was accomplished in just nine months, saved the state over \$2 million.

In 2001, Act 109 restored authority for the SPD to provide early representation. The results of a study of early representation cases showed that 23% of the early representation cases avoided felony charges, 20% avoided misdemeanor charges, 10% resulted in less serious charges, and 12% resulted in no charges filed. In a comparison of the average possible case hours and the actual hours spent on the early representation cases, a savings of 408 hours occurred, resulting in an ample cost savings to the Agency.

Act 109 also expanded the list of felonies from six to nine and eliminated the BC felony classification. The expanded list of felonies, and the modifications made to the sentencing guidelines, are expected to cause some increase in attorney case hours.

### AGENCY PERFORMANCE AND OPERATIONS DURING THE 2001-03 BIENNIUM

During Fiscal Year 2001-02, the SPD opened 123,753 cases; 40,634 of these were appointed to private bar attorneys on a rotational basis, and an additional 10,405 cases were appointed to private bar contractors.

In Fiscal Year 2002-03, the SPD opened a total of 132,209 cases; 48,581 of these were appointed to private bar attorneys on a rotational basis, and an additional 8,563 cases were appointed to private bar contractors.

The agency is required by statute to enter into fixed-fee contracts for not more than 33% of its private bar cases. The SPD entered into 55 fixed-fee contracts for up to 8,025 misdemeanor cases in 2001-02, and entered into 51 contracts for up to 7,185 cases in 2002-03.

State Public Defender collections from clients are received in the following categories: SPD initiated, DOA contract collections, county juvenile recoupment and court ordered payments. The following was received in each category during the biennium:

	2001-2002	2002-2003
SPD Initiated	\$875,800	\$1,045,656
Court Ordered Attorney Fees	110,613	125,788
Juvenile Recoupment	359,844	341,914
DOA Contractors	267,370	265,930
Total	\$1,613,627	\$ <del>1,779,288</del>

In 2001-02, the SPD referred 71,418 delinquent client accounts, representing \$18,136,833 in accounts receivable, to the DOA contracted collection agency. In 2002-03, the SPD referred 83,063 delinquent client accounts, representing \$24,086,182 in accounts receivable.

Funds were provided beginning in 2000-2001 to implement a wide area network (WAN) to link all SPD offices throughout the state, and ultimately permit connectivity with other justice-related agencies at the state and local levels. The WAN implementation was completed in 2002.

A new case management system, eOPD, was implemented in October of 2002. This web-based management system has greatly improved agency operation through integration of information both within and between agency divisions (e.g. Trial, Appellate, Collections, ACD, and Fiscal units) and agency business partners (e.g. State Collections Service), as well as many private bar

attorneys who defend indigent clients on behalf of the agency. A key component of eOPD has been the electronic bill submission for the private bar attorneys. This system has dramatically increased the agency's efficiency and accuracy in paying private bar attorneys. The enhanced capabilities of this system have also helped attract new attorneys who were previously reluctant to provide service to our clients due to the long turnaround time for payment after the submission of paper bills

In 2003, the SPD Intranet was also completed. The SPD Intranet includes links to the new eOPD, CCAP, Lexus, and includes agency forms, the staff directory and handbook, policies and procedures, and a discussion forum for staff.

In the fall of 2001, the SPD began surveying client satisfaction with a small but representative sample of misdemeanor and felony clients. Beginning in July of 2002, three hundred surveys were distributed per quarter. The results are tabulated, analyzed, and will become inputs to ongoing efforts to improve client services.

In 2002, the SPD again received the Wisconsin Forward Award (WFA), this time at the Mastery level. The SPD was one of only four organizations recognized at this level. The WFA's purpose is to promote and recognize high performance management principles and practices, particularly those relating to customer focus and continuous improvement.

## OFFICE OF THE STATE PUBLIC DEFENDER PROGRAM GOALS AND OBJECTIVES INCLUDED IN THE 2001 WISCONSIN ACT 109

Due to state budget constraints, the 2001-03 biennial budget, 2001 Wisconsin Act 109, addressed only the following program goals and objectives of the agency.

Act 109 restored authority for the SPD to provide early representation.

## OFFICE OF THE STATE PUBLIC DEFENDER PROGRAM GOALS AND OBJECTIVES INCLUDED IN THE 2003-05 BIENNIAL BUDGET

The state's fiscal situation did not permit funding new initiatives proposed by the Public Defender Board, such as updating seriously outdated financial eligibility standards, increasing the rate paid to private bar attorneys who take SPD cases, or providing base funding to implement a systematic replacement schedule for the Agency's information technology infrastructure.

The 2003-05 biennial budget bill included a five percent reduction to SPD operations.

### OFFICE OF THE STATE PUBLIC DEFENDER PART-TIME POSITIONS AND ALTERNATIVE WORK PATTERNS

The Office of the State Public Defender offers permanent part-time employment to its staff. Currently, there are 35 attorneys and 59 clerical staff who work part-time. There are 14 other support staff that are part-time. Some of these positions are also job-sharing.

The SPD also accommodates flexible time work schedules as requested by employees whenever possible.